

Regulatory Requirements for TAS Eligibility Under the Clean Air Act and Examples of Supporting Documentation

The information below identifies the regulatory requirements the U.S. Environmental Protection Agency considers in assessing a federally recognized Indian tribe's (tribe or tribal) application for treatment in the same manner as a state (TAS) under the Clean Air Act (CAA) Tribal Authority Rule set forth in 40 CFR part 49 and provides examples of documentation that has been provided by tribes to meet those requirements.¹

Regulatory Provision	Examples of Documentation
1) An Indian tribe must be federally recognized. 40 CFR 49.6(a). To meet this requirement, a tribe should provide a concise statement that it is recognized by the Secretary of the Interior. 40 CFR 49.7(a) (1).	The Secretary of the Interior publishes in the <i>Federal Register</i> (FR) a list of federally recognized Indian tribes. Applicants often submit a recent copy of the FR list to establish that the tribe has federal recognition.
2) The tribe has a governing body carrying out substantial governmental duties and powers. 40 CFR 49.6(b). An application should include a descriptive statement demonstrating that it is currently carrying out substantial governmental duties and powers over a defined area. 40 CFR 49.7(a) (2). The statement should:	
<ul style="list-style-type: none"> Describe the form of the tribal government. 40 CFR 49.7(a) (2) (i). 	Applications discuss the organizational structure of the tribe and identify and describe the entities that exercise the executive, legislative, and judicial functions of government.
<ul style="list-style-type: none"> Describe the types of government functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain. 40 CFR 49.7(a) (2) (ii). 	Applications discuss specific regulatory, legislative, executive and judicial activities the tribe undertakes, including actions to exercise its police power to protect the environment, e.g. establishing regulatory programs or carrying out permitting and enforcement activities.
<ul style="list-style-type: none"> Identify the source of the tribal government's authority to carry out the governmental functions currently being performed. 40 CFR 49.7(a) (2) (iii). 	Applications identify sources of the tribal government's authority, which may include oral or written tradition, an oral or written tribal constitution, tribal ordinances, codes, by-laws, charters, and resolutions, relevant provisions of federal treaties, executive orders or statutes, etc.

¹ Where the applicant has previously received authorization for a CAA program or for any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information that has not been submitted in the previous application. 40 CFR 49.7(a) (8).

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Regulatory Provision	Examples of Documentation
<p>3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction. 40 CFR 49.6(c). A tribe's application should include a descriptive statement of the Indian tribe's authority to regulate air quality. 40 CFR 49.7(a) (3).</p>	
<ul style="list-style-type: none"> ▪ For applications covering areas within the exterior boundaries of the applicant's reservation, the statement must identify with clarity and precision the exterior boundaries of the reservation including, for example, a map and legal description of the area. 40 CFR 49.7(a) (3). 	<p>EPA interprets CAA § 301(d) as a Congressional delegation of authority to eligible federally recognized tribes for all air resources within a reservation. Thus, a tribe's application must establish the reservation's location and boundaries. Applications include maps showing the area and air resources over which the tribe asserts authority. A map may be based on an official survey by the U.S. Department of the Interior or an official map of the reservation prepared by the Bureau of Indian Affairs. A written legal description discusses with some specificity the locations of the boundaries of the reservation areas over which the tribe asserts authority.</p>
<ul style="list-style-type: none"> • For tribal applications covering areas outside the boundaries of the reservation, the statement should include: 	
<ul style="list-style-type: none"> ○ A map or legal description of the area over which the application asserts authority. 40 CFR 49.7(a) (3) (i). 	<p>Applications include maps showing the area and air resources over which the tribe asserts authority. A map may be based on an official survey by the U.S. Department of the Interior or an official map of the reservation prepared by the Bureau of Indian Affairs. A written legal description discusses with some specificity the locations of the boundaries of the reservation areas over which the tribe asserts authority.</p>
<ul style="list-style-type: none"> ○ A statement by the applicant's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority (including the nature or subject matter of the asserted regulatory authority) which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the tribe's assertion of authority. 40 CFR 49.7(a) (3) (ii). 	<p>Legal counsel statements identify and discuss the legal basis for the tribe's assertions of authority over areas covered by the application, with special attention to showing the tribe has jurisdiction over nonmember activities, if applicable.</p>

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4) The tribe is reasonably expected to be capable of effectively administering the Clean Air Act program for which the tribe is seeking approval. 40 CFR 49.6(d). The application should include:	
<ul style="list-style-type: none"> • A narrative statement describing the capability of the applicant to administer effectively the Clean Air Act program for which the tribe is seeking approval. The narrative statement must demonstrate the applicant's capability consistent with the applicable provisions of the Clean Air Act and implementing regulations. 40 CFR 49.7(a) (4). 	<p>Examples of the recommended content of this narrative are listed below:</p>
And, if requested by the Regional Administrator, the statement may include:	
<ul style="list-style-type: none"> • A description of the Indian tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.), the Indian Mineral Development Act (25 U.S.C. 2101, et seq.), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a). 40 CFR 49.7(a) (4) (i). 	<p>In addition to experience with the federal programs listed in the regulation, tribal applications may also discuss the tribe's previous management experience with its own tribal programs. This discussion need not address environmental program management experience, which is included in the next heading.</p>
<ul style="list-style-type: none"> • A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, policies, and regulations. 40 CFR 49.7(a) (4) (ii). 	<p>Applications describe a tribal air, water, or waste management program, or any other environmental or public health programs administered by the tribe, as well as tribal experience with resource management. Relevant documents include copies or summaries of tribal laws and regulations governing the described program(s). A tribe is not required to have experience in administering environmental programs, but a tribe with such experience may wish to provide such information.</p>
<ul style="list-style-type: none"> • A description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government. 40 CFR 49.7(a) (4) (iii). 	<p>Applications describe the tribal governmental system. This information may overlap with or duplicate information about the tribal governmental structure and functions discussed under 40 CFR 49.7(a) (2) above, and a tribe may refer to, rather than repeat, that information.</p>
<ul style="list-style-type: none"> • A description of the existing, or proposed, agency of the Indian tribe that will assume primary responsibility for administering a Clean Air Act program (including a description of the relationship between the existing or proposed agency and its regulated entities). 40 CFR 49.7(a) (4) (iv). 	<p>Applications describe the tribe's environmental management program.</p>

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<ul style="list-style-type: none">• A description of the technical and administrative capabilities of the staff to administer and manage an effective air quality program or a plan which proposes how the tribe will acquire administrative and technical expertise. The plan should address how the tribe will obtain the funds to acquire the administrative and technical expertise. 40 CFR 49.7(a) (4) (v).	Applications describe the qualifications of tribal staff, including resumes. Position descriptions are also useful documentation, since individual staff may change in future years. Or an application may include a plan that describes how the tribe will acquire the needed expertise to operate an effective program and how it will obtain the funds required to develop technical and administrative expertise.
5) Additional information required by EPA that, in EPA's judgment, is necessary to support a tribal application. 40 CFR 49.7(a) (7).	Additional documentation from a tribe when needed to clarify or supplement the application.